Meeles, Inc., d/b/a Pennsauken Shop-N-Bag *and* United Food and Commercial Workers International Union, AFL–CIO, Local 1360 *and* United Food and Commercial Workers International Union, AFL–CIO, Local 56. Cases 4–CA–22686 and 4–CA–22726

January 24, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS AND TRUESDALE

Upon a charge filed by United Food and Commercial Workers International Union, AFL–CIO, Local 1360 (Local 1360) on April 26, 1994, and a first amended charge on June 16, 1994, in Case 4–CA–22686, and a charge filed by United Food and Commercial Workers International Union, AFL–CIO, Local 56 (Local 56) on May 9, 1994, and a first amended charge on June 10, 1994, in Case 4–CA–22726, the General Counsel of the National Labor Relations Board issued a consolidated complaint on July 29, 1994, against Meeles, Inc., d/b/a Pennsauken Shop-N-Bag (the Respondent) alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charges, amended charges and consolidated complaint, the Respondent failed to file an answer.

On October 25, 1994, the General Counsel filed a Motion for Summary Judgment with the Board. On October 27, 1994, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted.

Thereafter, however, on November 16, 1994, the Board issued a Supplemental Notice to Show Cause why the General Counsel's motion should not be denied, inasmuch as the consolidated complaint failed to allege that the Respondent has gross annual revenues in excess of $500,000. On December 5, 1994, the General Counsel filed a response to the Supplemental Notice to Show Cause and a motion to amend the consolidated complaint to allege that during the year preceding issuance of the consolidated complaint, the Respondent received gross revenues in excess of $500,000 and purchased goods and materials valued in excess of $50,000 directly from outside the State of New Jersey.

Thereafter, on December 20, 1994, the Board issued a Second Supplemental Notice to Show Cause why the General Counsel's motion to amend the consolidated complaint and for summary judgment should not be granted and the additional allegation in the General Counsel's motion to amend the consolidated complaint should not be deemed admitted to be true. The Respondent filed no response to either the Notice to Show Cause, or the Supplemental Notice to Show Cause, or the Second Supplemental Notice to Show Cause. The allegations in the motions for summary judgment and to amend the consolidated complaint are therefore undisputed.

The Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the consolidated complaint shall be deemed admitted if an answer is not filed within 14 days from service of the consolidated complaint, unless good cause is shown. In addition, the consolidated complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the consolidated complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated August 30, 1994, notified the Respondent that unless an answer were received by September 9, 1994, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a New Jersey corporation, has been engaged in the operation of a retail supermarket in Pennsauken, New Jersey. During the year preceding issuance of the consolidated complaint, the Respondent, in conducting its business operations, had gross revenues in excess of $500,000 and purchased goods and materials valued in excess of $50,000 directly from outside the State of New Jersey. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Locals 1360 and 56 are labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent (the Local 1360 unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

> All employees, regardless of hours worked, working in the Respondent's Pennsauken, New Jersey supermarket, excluding store managers, assistant store managers, all meat and appetizing depart-

> ment employees, a trainee per store, porters, receivers and other personnel who may be supervisors or guards within the meaning of the National Labor Relations Act, as amended.

Since at least September 1991, and at all material times, Local 1360 has been the designated exclusive collective-bargaining representative of the Local 1360 unit, and since on or about September 1991, Local 1360 has been recognized as the representative by the Respondent. This recognition has been embodied in a collective-bargaining agreement (the Local 1360 agreement) which is effective by its terms from August 8, 1991, to September 1, 1994. At all times since at least September 1991, based on Section 9(a) of the Act, Local 1360 has been the exclusive collective-bargaining representative of the Local 1360 unit.

The following employees of the Respondent (the Local 56 unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

> All meat, poultry, fish, delicatessen, appetizing & dairy employees, excluding guards and supervisors as defined in the Act.

Since at least September 1991, and at all material times, Local 56 has been the designated exclusive collective-bargaining representative of the Local 56 unit, and since on or about September 1991, Local 56 has been recognized as the representative by the Respondent. This recognition has been embodied in the most recent collective-bargaining agreement (the Local 56 agreement) which is effective by its terms from March 17, 1993, to March 17, 1997. At all times since at least September 1991, based on Section 9(a) of the Act, Local 56 has been the exclusive collective-bargaining representative of the Local 56 unit.

On or about April 9, 1994, the Respondent closed the Pennsauken store and terminated its employees. These subjects relate to wages, hours, and other terms and conditions of employment of the Locals 1360 and 56 units and are mandatory subjects for the purposes of collective bargaining. The Respondent engaged in this conduct without prior notice to Locals 1360 or 56 and without affording Locals 1360 or 56 an opportunity to bargain with the Respondent regarding the effects of the conduct.

Since on or about January 1, 1994, the Respondent has failed to continue in effect all the terms and conditions of the Locals 1360 and 56 agreements. The Respondent engaged in this conduct without the Unions' consent. These terms and conditions of employment are mandatory subjects for the purposes of collective bargaining.

CONCLUSIONS OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively with the representatives of its employees within the meaning of Section 8(d), and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

As a result of the Respondent's unlawful failure to bargain in good faith with the respective Unions about the effects of its decision to close its facility, the terminated employees have been denied an opportunity to bargain through their respective collective-bargaining representatives. Meaningful bargaining cannot be assured until some measure of economic strength is restored to the respective Unions. A bargaining order alone, therefore, cannot serve as an adequate remedy for the unfair labor practices committed.

Accordingly, we deem it necessary, in order to effectuate the purposes of the Act, to require the Respondent to bargain with the respective Unions concerning the effects of closing its facility on its employees, and shall accompany our Order with a limited backpay requirement designed both to make whole the employees for losses suffered as a result of the violations and to recreate in some practicable manner a situation in which the parties' bargaining positions are not entirely devoid of economic consequences for the Respondent. We shall do so by ordering the Respondent to pay backpay to the terminated employees in a manner similar to that required in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968).

Thus, the Respondent shall pay its terminated employees backpay at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and Order until occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the respective Unions on those subjects pertaining to the effects of the closing of its facility on its employees; (2) a bona fide impasse in bargaining; (3) the respective Union's failure to request bargaining within 5 days of the date of this Decision and Order, or to commence negotiations within 5 days of the Respondent's notice of its desire to bargain with the respective Union; (4) the respective union's subsequent failure to bargain in good faith; but in no event shall the sum paid to these employees exceed the amount they would have earned as wages from the date on which the Respondent terminated its operations, to the time they se-

cured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner; provided, however, that in no event shall this sum be less than the employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ. Backpay shall be based on earnings which the terminated employees would normally have received during the applicable period, less any net interim earnings, and shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Furthermore, having found that the Respondent has failed, since January 1, 1994, to continue in effect all the terms and conditions of the Locals 1360 and 56 agreements, we shall order it to honor the terms of the agreements and to make the unit employees whole as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), and *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1979), including any additional amounts applicable to such delinquent payments as determined in accordance with the criteria set forth in *Merryweather Optical Co.*, 240 NLRB 1213 (1979), with interest as prescribed in *New Horizons for the Retarded*, supra.

Finally, in view of the fact that the Respondent's facility is currently closed, we shall order the Respondent to mail a copy of the attached notice to the respective Unions and to the last known addresses of its former employees in order to inform them of the outcome of this proceeding.

ORDER

The National Labor Relations Board orders that the Respondent, Meeles, Inc., d/b/a Pennsauken Shop-N-Bag, Pennsauken, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing or refusing to give prior notice to Local 1360 or affording it an opportunity to bargain with the Respondent about the effects on the Local 1360 unit of the April 9, 1994 closure of the Respondent's Pennsauken store and the termination of its employees.

(b) Failing or refusing to give prior notice to Local 56 or affording it an opportunity to bargain with the Respondent about the effects on the Local 56 unit of the April 9, 1994 closure of the Respondent's Pennsauken store and the termination of its employees.

(c) Failing, since about January 1, 1994, to continue in effect all the terms and conditions of the Locals 1360 and 56 agreements.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Pay the Locals 1360 and 56 unit employees their normal wages for the period set forth in the remedy section of this decision.

(b) On request, bargain collectively with Local 1360 regarding the effects on the Local 1360 unit employees of its decision to close the Pennsauken store, and reduce to writing any agreement reached as a result of such bargaining.

(c) On request, bargain collectively with Local 56 regarding the effects on the Local 56 unit employees of its decision to close the Pennsauken store, and reduce to writing any agreement reached as a result of such bargaining.

(d) Honor the terms and conditions of the Locals 1360 and 56 agreements, and make the respective unit employees whole for its failure to do so since January 1, 1994, in the manner set forth in the remedy section of this decision.

(e) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Mail an exact copy of the notice marked "Appendix"[1] to Locals 1360 and 56, and to all employees who were employed at the Pennsauken store. Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be mailed immediately upon receipt.

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. January 24, 1995

William B. Gould IV,	Chairman
James M. Stephens,	Member
John C. Truesdale,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[1] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail or refuse to give prior notice to United Food and Commercial Workers International Union, AFL–CIO, Local 1360 or afford it an opportunity to bargain about the effects on the Local 1360 unit of the April 9, 1994 closure of our Pennsauken store and the termination of our employees. The Local 1360 unit includes the following employees:

> All employees, regardless of hours worked, working in our Pennsauken, New Jersey supermarket, excluding store managers, assistant store managers, all meat and appetizing department employees, a trainee per store, porters, receivers and other personnel who may be supervisors or guards within the meaning of the National Labor Relations Act, as amended.

WE WILL NOT fail or refuse to give prior notice to United Food and Commercial Workers International Union, AFL–CIO, Local 56 or afford it an opportunity to bargain about the effects on the Local 56 unit of the April 9, 1994 closure of our Pennsauken store and the termination of our employees. The Local 56 unit includes the following employees:

> All meat, poultry, fish, delicatessen, appetizing & dairy employees, excluding guards and supervisors as defined in the Act.

WE WILL NOT fail, since about January 1, 1994, to continue in effect all the terms and conditions of the Local 1360 agreement, effective by its terms from August 8, 1991, to September 1, 1994, or the Local 56 agreement, effective by its terms from March 17, 1993, to March 17, 1997.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL pay the Locals 1360 and 56 unit employees their normal wages for the period set forth in the remedy section of this decision.

WE WILL, on request, bargain collectively with Local 1360 regarding the effect on the Local 1360 unit employees of our decision to close the Pennsauken store, and reduce to writing any agreement reached as a result of such bargaining.

WE WILL, on request, bargain collectively with Local 56 regarding the effect on the Local 56 unit employees of our decision to close the Pennsauken store, and reduce to writing any agreement reached as a result of such bargaining.

WE WILL honor the terms and conditions of the Locals 1360 and 56 agreements, and make the respective unit employees whole for our failure to do so since January 1, 1994.

MEELES, INC., D/B/A PENNSAUKEN SHOP-N-BAG